

CITY COUNCIL REPORT



Meeting Date: *October 2, 2012*
General Plan Element: *Neighborhoods*
General Plan Goal: *Enhance and protect neighborhoods*

ACTION

Adopt Resolution No. 9175 authorizing contract No. 2012-140-COS allowing the Police Department to enter into an Intergovernmental Agreement, which allows the Scottsdale Police Department to provide forensic laboratory services to the Fort McDowell Yavapai Nation Police Department for \$28,054 per year.

BACKGROUND

Since 1998, the Scottsdale Police Department has provided forensic laboratory services in the areas of drug analysis, blood alcohol analysis, latent fingerprint examinations, forensic biology examinations, firearms examinations and trace evidence comparisons to the Fort McDowell Yavapai Nation Police Department through an intergovernmental agreement. In the past, both agencies have acted cooperatively regarding law enforcement support and both agencies desire to continue and expand this cooperative relationship in order to enhance public safety and welfare to their residents.

ANALYSIS & ASSESSMENT

Recent Staff Action

The Scottsdale Police Department has reviewed its ability to provide forensic laboratory services through its crime laboratory to the Fort McDowell Yavapai Nation Police Department. Less than 1.5% of the total forensic caseload performed by the crime laboratory can be attributed to submissions from Fort McDowell Yavapai Nation Police Department. The continuation of providing forensic laboratory services by the crime laboratory to the Fort McDowell Yavapai Nation Police Department will not hinder the laboratory's ability to continue to respond to the needs of the Scottsdale Police Department.

Community Involvement

The Scottsdale Police Department continually reaches out to surrounding communities to offer assistance to their law enforcement. The forensic services of the crime laboratory have been offered through Intergovernmental Agreements to the Town of Paradise Valley, the Salt River Maricopa-Pima Indian Community as well as Fort McDowell Yavapai Nation. These agreements were established with the desire to conserve resources and provide forensic investigative and

support services and to facilitate the investigation and prosecution of crimes in furtherance of the public safety and welfare of the citizens within the boundaries of these organizations. These agreements have been very successful and beneficial to all parties involved.

RESOURCE IMPACTS

Available Funding

Through the Intergovernmental Agreement, the Fort McDowell Yavapai Nation will provide to the City of Scottsdale Police Department a total of \$28,054. The funds will be deposited in the existing Forensic Science Agreements center (280-22304) where budget authority was included in the FY 2012/13 adopted budget and will be used to cover expenditures incurred by the City of Scottsdale Police Department for indirect costs, supplies, training, equipment maintenance expenditures and personnel costs incurred while providing the services proposed under this agreement.

Staffing, Workload Impact

No additional staff will be required to complete these service enhancements.

Maintenance Requirements

No additional maintenance requirements will be required.

Future Budget Implications

The Intergovernmental Agreement allows for a yearly review of all costs to insure that funding remains appropriate to the needs of both parties. Based on the annual review of the costs incurred, additional budget expenditures may be requested, if needed.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 9175 to accept the Intergovernmental Agreement between the Scottsdale Police Department and the Fort McDowell Yavapai Nation Police Department in that it will provide sufficient funds to cover the services provided, that it will not require additional staffing, it is beneficial to the public safety and welfare of the citizens of both communities, and it will encourage continued good relations between the City of Scottsdale and the Fort McDowell Yavapai Nation.

RESPONSIBLE DEPARTMENT(S)

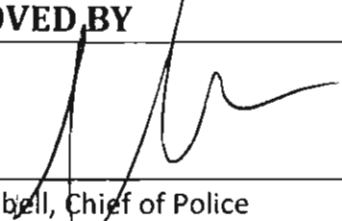
Scottsdale Police Department, Forensic Services Division

Finance & Accounting Division

STAFF CONTACTS (S)

Steve Garrett, Police Forensic Services Director, sgarrett@scottsdaleaz.gov

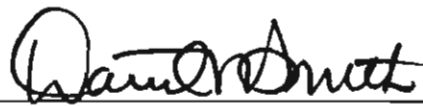
APPROVED BY



Alan Rodbell, Chief of Police
480-312-1901, arodbell@scottsdaleaz.gov

8/21/12

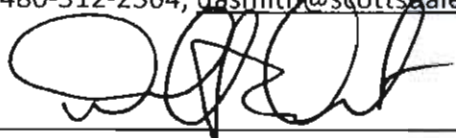
Date



David N. Smith, City Treasurer
480-312-2364, dasmith@scottsdaleaz.gov

8/29/12

Date



Daniel Worth, Acting City Manager
480-312-2811, dworth@scottsdaleaz.gov

9-10-12

Date

ATTACHMENTS

1. Resolution No. 9175
2. Intergovernmental Agreement No. 2012-140-COS

RESOLUTION NO. 9175

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING INTERGOVERNMENTAL AGREEMENT NO.2012-140-COS WITH THE FORT MCDOWELL YAVAPAI NATION, FOR THE PROVISION OF FORENSIC LABORATORY SERVICES.

WHEREAS, Arizona Revised Statutes Sections 11-951, et. seq. provide that public agencies may enter into intergovernmental agreements to contract for services, or for the provision of services, or for joint or cooperative action; and

WHEREAS, Article 1, Section 3-1 of the City Charter of the City of Scottsdale ("City") authorizes the City to enter into intergovernmental agreements with various public agencies, including Indian tribes; and

WHEREAS, the Fort McDowell Yavapai Nation ("Nation") has previously contracted with the City for forensic laboratory services and will pay the City \$28,054.00 annually in quarterly payments of \$7,013.50 for this service;

WHEREAS, the City and the Nation agree that an agreement to provide forensic laboratory services enhances police services and capabilities in furtherance of public safety and the welfare of both communities;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The City Council hereby authorizes and directs the Mayor to execute, on behalf of the City, Intergovernmental Agreement No. 2012-140-COS, with the Fort McDowell Yavapai Nation for the purpose of performing forensic crime laboratory services.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 2nd day of October, 2012.

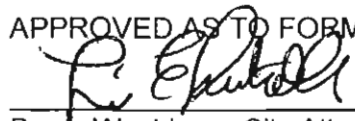
CITY OF SCOTTSDALE, an
Arizona municipal corporation,

ATTEST:

Carolyn Jagger
City Clerk

W.J. "Jim" Lane
Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: Luis E. Santaella, Senior Assistant City Attorney

INTERGOVERNMENTAL AGREEMENT

By and Between

The Fort McDowell Yavapai Nation

And

The City of Scottsdale

This Intergovernmental Agreement ("Agreement"), is made and entered into this ____ day of _____, 2012, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and the Fort McDowell Yavapai Nation ("Nation"), a Federally-Recognized Indian Tribe, collectively referred to herein as the "Parties."

Recitals

WHEREAS, Article 1, Section 3-1 of the City Charter of the City of Scottsdale authorizes the City to enter into intergovernmental Agreements with various governmental entities, including Indian tribes.

WHEREAS, the Nation is authorized by Section 13(A)(15) of Article V, Legislative Branch, of the Constitution of the Fort McDowell Yavapai Nation to consult, negotiate, contract and conclude and perform agreements with Federal, state, local governments and Indian tribes, as well as any person, association, partnership, corporation, government or other private entity.

WHEREAS, on August 21st, 2007, the City and the Nation entered into City of Scottsdale Agreement No. 2007-124-COS, under which the City agreed to provide certain crime laboratory services to the Nation ("2007 Agreement").

WHEREAS, the 2007 Agreement expires by its terms on September 30, 2012.

WHEREAS, the Parties recognize that the services provided under the 2007 Agreement enabled the Parties to provide their respective communities with enhanced public safety services and, for that reason, the Parties desire to continue their contractual relationship for the provision by the City of certain crime laboratory services to the Nation, all on the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the above recitals, the mutual promises given in this Agreement and for the other good and valuable consideration, the Parties agree as follows:

I. General Responsibilities

Unless otherwise expressly provided herein, the Parties agree that they shall be responsible for the following:

A. Forensic Services

1. The City shall, through the Scottsdale Police Department Forensics Services Division, perform the following services:
 - a. Analysis and identification of any dangerous or narcotic drugs within thirty (30) working days after delivery to the City Crime Laboratory.
 - b. Analysis of blood samples for the presence of ethyl alcohol within fourteen (14) days after delivery to the City Crime Laboratory.
 - c. Forensic biology analysis, to include identifying stains for type of body fluid, and nuclear deoxyribonucleic acid ("DNA") analysis, using polymerase chain reaction ("PCR") and Y-Short Tandem Repeat technique, within sixty (60) working days after delivery to the City Crime Laboratory. The Nation will be limited to having the City perform forensic DNA analysis on a total of twelve (12) separate Nation cases per contract year.
 - d. Latent fingerprint processing and comparisons within sixty (60) working days after delivery to the City Crime Laboratory.
 - e. The City will purchase and furnish to the Nation's Police Department each year up to a total of 1200 LightScribe or equivalent DVD's and a total of 1200 plastic jewel DVD cases.
 - f. Miscellaneous trace examinations to include, fiber and hair comparison, footwear and tire tread comparisons and arson accelerant identification, within sixty (60) days after delivery to the City Crime Laboratory.
 - g. Firearms/toolmark examination and comparison within sixty (60) days after delivery to the City Crime Laboratory.
 - h. For court purposes, producing photographic enlargements up to 11x17 inches in size of crime scene photographic images taken by the Nation's Police Department.
 - e. Courtroom testimony by City Crime Laboratory personnel for analyses performed for the Nation, as may be required.
 - f. Twenty-four hours each year of on-site training will be offered in crime scene processing, evidence packaging, and crime scene photography, to employees of the Nation's Police Department in training blocks of four (4) and eight (8) hours. The City may also provide one-on-one training to the Nation's police employees if warranted and agreeable to both the City and the Nation. It will be the responsibility of the Nation to request the training and provide suggested training needs.
 - g. Any new laboratory service that is initiated within the City Crime Laboratory during the contract period will also be offered to the Nation based on terms and conditions acceptable to both Parties.
2. The Nation, through the Nation's Police Department, shall:
 - a. Transport, deliver and retrieve all evidence to and from the City Crime Laboratory.

- b. Package and deliver evidence pursuant to City Police Department and City Crime Laboratory policies and procedures.
 - c. Provide any and all forms necessary to facilitate the transfer of evidence to and from the Nation to the City.
3. Limitations and conditions. The following limitations and conditions shall apply to the performance of this Agreement:
- a. The following laboratory services will not be provided by the City:
 - i. Examination of questioned documents.
 - ii. Crime scene processing.
 - iii. Forensic computer analysis.
 - iv. Any trace evidence examinations not currently performed by the crime laboratory, such as glass, soil and paint comparison, and gunshot residue analysis.
 - v. The toxicology analysis of blood or urine for prescription drugs or controlled substances.
 - b. The City will store evidence from the Nation only for the length of time it is necessary to perform the required analyses or examinations. The Nation shall retrieve from the City all evidence and reports on a regular and timely basis, as set by the City.

II. General Conditions

- A. The Nation shall not be responsible for any overtime cost required to fulfill the terms of this Agreement.
 - B. The Nation shall not be held responsible for any Workmen's Compensation claims resulting from injuries sustained by a City employee while in the performance of this Agreement. Neither the City nor Nation shall be responsible for the other's activities performed pursuant to this Agreement.
1. To the fullest extent permitted by law, the City agrees to indemnify, defend and hold the Nation, its agents, representatives, officers, officials, directors and employees, harmless from and against any and all liability, suits, obligations, fines, damages, penalties, claims, costs charges, expenses (including reasonable attorney fees) of any character or nature resulting from the negligent or willful misconduct of the City. For purposes of this paragraph, "negligent or willful misconduct of the City" shall include any act or omission of the City, or its assignees or subcontractors under this Agreement, determined by a court or other agency of competent jurisdiction to be negligent, intentional, or a violation of a federal environmental law or this Agreement.
2. To the fullest extent permitted by law, the Nation agrees to indemnify, defend and hold the City, its agents, representatives, officers, officials, directors and employees,

harmless from and against any and all liability, suits, obligations, fines, damages, penalties, claims, costs charges, expenses (including reasonable attorney fees) of any character or nature resulting from the negligent or willful misconduct of the Nation. For purposes of this paragraph, "negligent or willful misconduct of the Nation" shall include any act or omission of the Nation, or its assignees or subcontractors under this Agreement, determined by a court or other agency of competent jurisdiction to be negligent, intentional, or a violation of a federal environmental law or this Agreement.

III. Costs

The Nation shall pay the City, for the services rendered under this Agreement for each twelve (12) month period, a sum total of twenty-eight thousand and fifty-four dollars and no cents (\$28,054.00). The Nation shall make quarterly payments of seven thousand and thirteen dollar and fifty cents (\$7,013.50), with the first payment due on or before January 1, 2013, and subsequent payments due on or before the first day of each quarter thereafter. The Nation shall make said quarterly payments throughout the term of this Agreement irrespective of the actual services requested by the Nation under this Agreement. The City shall bear the cost of employees' salaries and benefits and provide the equipment and supplies needed to meet the City's responsibilities under this Agreement.

IV. Terms and Renewal

- A. The term of this Agreement shall be for a period of four (4) years, commencing on October 1, 2012, and ending on September 30, 2016. However, on or before October 1st of each year during the term of this Agreement, the terms of this Agreement will be reviewed by the City and the Nation, and, if necessary, amended to insure that the costs of this Agreement are appropriate and agreeable for the services being rendered.
- B. Any notice required to be given pursuant to the provisions of this Agreement shall be given in writing, and either delivered in person or deposited in the United States mail, postage pre-paid, registered or certified mail, return receipt requested, and properly addressed, at the following addresses:

For the City of Scottsdale:

City of Scottsdale Police Department
Crime Laboratory
7601B East McKellips Rd
Scottsdale, AZ 85257
Attention: Steve Garrett

City Attorney
City of Scottsdale
3939 North Drinkwater Blvd.
Scottsdale, AZ 85251
Attention: Luis Santaella

For the Fort McDowell Yavapai Nation:

Fort McDowell Police Department
Jesse Delmar
10755 N. Fort McDowell Road
Fort McDowell, AZ 85264

General Counsel
P.O. Box 17779
Fountain Hills, AZ 85269

Either Party may furnish to the other a different mailing address and designate another individual upon whom all notices may be serviced as herein provided. Such notices shall be given in accordance with this section.

- C. Either Party may terminate this Agreement for convenience upon sixty (60) days prior written notice. Upon termination, the Nation shall immediately pay the City a pro rata share of the quarterly payment amount, which shall be equal to the quarterly payment amount multiplied by the ratio of the days elapsed in the quarter at the termination of the Agreement to the total number of days in the quarter. Such termination shall not relieve either Party from those liabilities or costs already incurred, obligated, or contracted toward performance under this Agreement.
- D. The Nation may terminate this Agreement for material breach of this Agreement by the City, as described below. Prior to any termination under this paragraph, the Nation shall give the City written notice of the nature of the alleged default. The City shall have twenty (20) days to cure the default. The following shall constitute material breach:
 - 1. Persistent disregard of applicable laws, ordinances, or rules and regulations of a public authority having jurisdiction; or
 - 2. Refusing or failing to perform under this Agreement with such diligence as will ensure its timely completion within the agreed upon time, or failure to complete the work within such time.
- E. The City may terminate this Agreement for material breach of this Agreement by the Nation, including, without limitation, failure to pay any and all sums as and when due under the terms of this Agreement. Prior to any termination under this paragraph, the City shall give written notice to the Nation of the nature of the alleged default. The Nation shall have twenty (20) days to cure the default.
- F. This Agreement is subject to termination pursuant to A.R.S. §38-511.
- V. Miscellaneous
 - A. This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement shall supersede any other agreement between the parties on the same subject matter.
 - B. Any amendment or modification to, or variation from, the terms of this Agreement shall be in writing and shall be effective only after approval of the Parties.
 - C. Neither Party shall assign or delegate, in whole or in part, its rights or responsibilities under this Agreement.
 - D. The contract administrator for the City ("City Contract Administrator") shall be Steve Garrett, the Scottsdale Police Department Forensic Services Director, or his designee or replacement. The City Contract Administrator shall be authorized to represent the City on all matters relating to the performance and enforcement of this Agreement.
 - E. The contract administrator for the Nation ("Nation Contract Administrator") shall be Jesse Crabtree, Fort McDowell Police Department, or his designee or replacement. The Nation Contract Administrator shall be authorized to represent the Nation on all matters relating to the performance and enforcement of this Agreement.

F. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

VI. Compliance with E-Verify Program

A. To the extent provisions of A.R.S. §41-4401 are applicable, both Parties warrant to the other Party that they will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

B. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

C. Both Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above.

D. Either Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty.

E. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

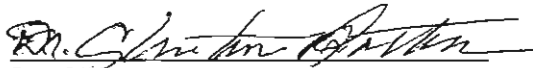
F. The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

IN WITNESS WHEREOF the Parties hereby execute this Agreement by affixing their signatures below, on the date first written above.

CITY OF SCOTTSDALE


FORT MCDOWELL YAVAPAI NATION

W.J. "Jim" Lane
Mayor


Dr. Clinton Pattea
President

ATTEST:

By _____
Carolyn Jagger
City Clerk

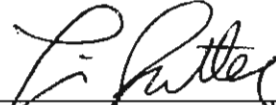
By 
Selena Castaneda
Nation Clerk

APPROVED AS TO FORM:

Bruce Washburn
City Attorney
By Luis Santaella
Senior Assistant City Attorney

In accordance with A.R.S. Section 11-952, the undersigned, as legal counsel for the City of Scottsdale, has reviewed the foregoing intergovernmental agreement and has determined that it is in appropriate form and is within the powers and authority granted to the City.

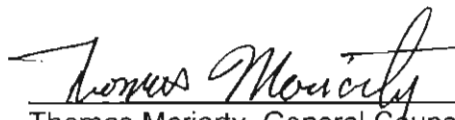
SCOTTSDALE CITY ATTORNEY'S OFFICE

 8/22/2012

Bruce Washburn, City Attorney Date
By: Luis Santaella, Senior Assistant City Attorney

The undersigned attorney acknowledges that he has reviewed the above Agreement on behalf of the Fort McDowell Yavapai Nation, and has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the Constitution of the Fort McDowell Yavapai Nation, Section 13(A)(15), Article V Legislative Branch, as adopted October 19, 1999 and approved by the U.S. Deputy Commissioner of Indian Affairs November 12, 1999. This acknowledgement shall not constitute nor be construed as a waiver of the Sovereign Immunity of the Fort McDowell Yavapai Nation.

FORT MCDOWELL YAVAPAI NATION
OFFICE OF GENERAL COUNSEL

 8-14-12

Thomas Moriarty, General Counsel Date
Fort McDowell Yavapai Nation